



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,524	08/01/2000	Darrell L. Metz	8266-0371	7337

25267            7590            04/15/2003  
**BOSE MCKINNEY & EVANS LLP**  
135 N PENNSYLVANIA ST  
SUITE 2700  
INDIANAPOLIS, IN 46204

EXAMINER	
CHAN, KO HUNG	
ART UNIT	PAPER NUMBER

3632

DATE MAILED: 04/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/629,524	METZ ET AL.
	Examiner Korie H. Chan	Art Unit 3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 May 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 1-9 and 38-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9, 38-42 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .

- 4) Interview Summary (PTO-413) Paper No(s). Z /  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_ .

***Response to Amendment***

Due to the findings of new references of (US PATENT NO. 5,000,124 to Bergen, and US PATENT NO. 2,943,831 to Goss), the **finality** of the rejection of the last Office action is **withdrawn**. Consequently, the amendment filed 1/13/2003, paper no. 17 and the amendment filed 3/5/2003, paper no. 20 have been entered. The status of the claims are as follows: Claims 1-9 and 38-42 are pending. Claim 10-37 and 43-87 have been canceled by applicant's amendments.

This Office Action is a Non-final Office Action due to the citing of new references. The indicated allowability of claims 1-8 are withdrawn in view of the newly discovered reference(s) to US PATENT NO. 5,000,124 to Bergen, and US PATENT NO. 2,943,831 to Goss. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitations "coupled to a housing" and "positioned to slide on a housing" are vague and indefinite as applicant appears to inferentially claim the housing. Further, it is not clear as to a housing of what element.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-5, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergen'124. Bergen discloses a device support apparatus comprising a telescoping pole assembly including a first member (cover 35) and a second member (30) movable relative to the first member along an axis in a first direction and a second direction opposite to the first direction and a lock member (52) formed to include an edge defining a four-sided aperture (64), the second member (30) being received in the aperture (64), the lock member having a second position in which the edge engages the second member to prevent movement of the second member relative to the first member in the first direction and the lock member having a first position in which the edge disengages from the second member so that the second member is movable along the axis relative to the first member in the first direction and second direction; wherein the lock member and the axis define a first angle therebetween when the lock member is in the first position and a second angle that deviates from the first angle when the lock member is in the second position; wherein a housing (34) is coupled to the telescoping assembly wherein the lock member is positioned in an interior region of the housing; wherein the lock member is pivotally coupled to the housing; wherein a release (36) is provided

configured to move the lock member between the first and second positions; wherein the edge of the aperture (64) is continuous; wherein the lock member is platelike (52).

Claim 1-5, 7, 8, and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Goss'831. Goss'831 discloses a device support apparatus comprising a telescoping pole assembly including a first member (top plate 23d) and a second member (16d) movable relative to the first member along an axis in a first direction and a second direction opposite to the first direction and a lock member (27) formed to include an edge defining a four-sided aperture (25d), the second member (16d) being received in the aperture (25d), the lock member having a second position in which the edge engages the second member to prevent movement of the second member relative to the first member in the first direction and the lock member having a first position in which the edge disengages from the second member so that the second member is movable along the axis relative to the first member in the first direction and second direction; wherein the lock member and the axis define a first angle therebetween when the lock member is in the first position and a second angle that deviates from the first angle when the lock member is in the second position; wherein a housing (17, 20, 24) is coupled to the telescoping assembly wherein the lock member is positioned in an interior region of the housing; wherein the lock member is pivotally coupled to the housing; wherein a release (27d, fig. 6) is provided configured to move the lock member between the first and second positions; wherein the edge of the aperture (25d) is continuous; wherein the lock member is platelike (27); regarding claim 9, the lock

member when in the second position, allows movement of the second member (16d) relative to the first member in the second direction (column 2, lines 5-10).

For the above rejections, applicant's intended usage for "medical device" as in the recitation "medical device support" is not accorded with patentable weight.

***Claim Rejections - 35 USC § 103***

Claims 1-9 and 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (3,588,023) in view of Goss'831 . Cohen discloses support assembly comprising a telescoping assembly having an adjustment pole (18) with a hook (24, fig. 1), a base pole (16) receiving the adjustment pole, a locking member having a housing (30), a locking plate (50) with a continuous aperture for locking the adjustment pole 18, the locking plate biased into a lock position via (40), the housing has a groove (between 31 and 40) for pivotally receiving an end of the locking plate (51), a release (44) configure to slide in the housing, wherein, the lock member configured to pivot about a pivot axis between a first position, permitting movement in first and second directions, and a second position permitting movement in the second direction to elongate but blocking movement in the first direction of shortening the telescoping assembly, further, a lengthening force can be applied to the adjustment pole to lengthen the pole (Column 3). However, Cohen does not disclose the aperture is a four-sided aperture. Cohen discloses his aperture to be round for its cylindrical rod It is examiner's view that the shape of the aperture of the locking plate is a mere function of the shape of the particular telescoping pole or rod. Goss'831 demonstrates this by showing that a cylindrical rod (16) would have a rounded aperture while a square or rectangular rod

(16d) would have a four-side aperture on its locking plate. It is notoriously old and well-known to provide for square sided telescoping post or pole. Consequently, to modify the telescoping assembly of Cohen such that the telescoping pole is of a four-sided polygon and such that the locking plate has a four-sided aperture for receiving the same cross-sectioned pole as taught by Goss'831 would have been obvious to one of ordinary skill in the art at the time the invention was made.

***Response to Arguments***

Applicant's arguments with respect to claims 1-9 and 38-42 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Les Braun can be reached on 703-308-2156. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Korie H. Chan  
Primary Examiner  
Art Unit 3632

khc  
April 10, 2003